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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 United States of America,
11 Plaintiff,
12 v.
13 Sheldon Player,
14 Defendant.

CR 86-00081-PHX-RCB

**UNITED STATES' RESPONSE TO
MOTION TO COMPEL**

15 The United States of America, by and through undersigned counsel, hereby
16 responds to the Motion to Compel (doc. 42) filed on August 16, 2011 by William
17 Brandt, Plan Administrator of EAR, debtor in a Chapter 11 bankruptcy. This
18 Response is supported by the accompanying Memorandum of Points and Authorities
19 and all matters of record.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **A. BACKGROUND**

22 On December 21, 1988, a Judgment in a Criminal Case ("Judgment") was
23 entered pursuant to a guilty plea by Defendant. The Judgment provided that
24 Defendant make restitution to Greyhound Financial Corporation in the amount of
25 \$500,000. On June 6, 2008, Defendant made final payment on the balance of the
26 restitution judgment. Payment was made to the Clerk of the Court, who in turn,
27 disbursed the monies to the victim of record.

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1 **B. LEGAL ARGUMENT**

2 1. APPLICABLE LAW TO RESTITUTION ORDERED.

3 Defendant was sentenced pursuant to the The Victim and Witness Protection Act
4 of 1982 (VWPA), Pub.L. No. 97-291, § 5^{1/} . The VWPA was amended as part of the
5 Sentencing Reform Act of 1984, Pub.L. No. 98-473, title II, ch. II, § 212, to enhance the
6 power of the United States to use federal fine collection statutes to collect restitution. The
7 amendment authorized the United States to enforce restitution orders “in the manner
8 provided for the collection and payment of fines” under 18 U.S.C. § 3613. 18 U.S.C. §
9 3663(h)(1)(A). Section 3663(h)(1)(A) allows the Government to utilize all methods of
10 collection provided for in Title 18, chapter 229, subchapter B and one of those methods
11 creates a lien on the fined person's property that does not expire for twenty years. See 18
12 U.S.C. § 3613(a) and (b)(1). Accordingly, on the date of the final payment made by
13 Defendant, the United States had a lien on all of Defendant's property and rights to
14 property, including ownership interest in EAR.

15 2. VICTIM

16 Greyhound Financial was the original victim listed in the Judgment. On January 26,
17 1995, Greyhound Financial Corporation changed its name to Finova Capital Corporation
18 (“Finova”) ^{2/} and thereafter, all restitution distributions were made payable to Finova.

19 On March 7, 2001, in the District of Delaware, Finova filed a voluntary petition under
20 Chapter 11 of the Bankruptcy Code thereby commencing *In re Finova Capital Corporation*,
21 Case No. 01-00698. On December 14, 2009, a Motion for Final Decree (doc. 292, BK-01-
22 00698) was filed in the bankruptcy case indicating that the Chapter 11 Plan had been
23 substantially consummated. Attached as Exhibit A to the Motion for Final Decree, was a
24

25 ^{1/} See *Hughey v. United States*, 495 U.S. 411, 413 n. 1, 110 S.Ct. 1979, 109
26 L.Ed.2d 408 (1990).

27 ^{2/} January 26, 1995, Form 8-K filed with the Securities and Exchange
28 Commission.

1 Certificate of Dissolution of Finova Capital Corporation stating that the Board of Directors
2 had authorized dissolution of Finova, effective November 16, 2009. Accordingly, because
3 Finova had not yet been dissolved and continued operations, the final restitution
4 distribution was made to Finova.

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6 Respectfully submitted this 19th day of August, 2011.

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DENNIS K. BURKE
United States Attorney
District of Arizona

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/s Elizabeth A. Wilson
Elizabeth A. Wilson
Assistant U.S. Attorney

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CERTIFICATE OF SERVICE

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I hereby certify that on August 22, 2011 I electronically transmitted the attached
document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
Notice of Electronic Filing to the following CM/ECF registrants:

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s/Lisa Startup

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